

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4700 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? No.
2. To be referred to the Reporter or not? No.

J

3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge? No.

-----  
CHAIRMAN

Versus

DIVISIOANL CONTROLLER

-----  
Appearance:

MR RC JANI, Advocate, for Petitioner.

MR YS LAKHANI, Advocate, for Respondents.

-----  
CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 17/04/96

ORAL JUDGEMENT

Rule. Mr. Y.S. Lakhani, learned Advocate, waives service of notice for the respondents.

2. That the petitioner was inducted as a licensee for the period which admittedly expired in the year 1984. The licence was not renewed. It appears that the petitioner approached the Civil Court. There is no clear

pleading with respect to the proceedings before the Civil Court. However, it is stated that in the year 1984 the proceedings were initiated under the provisions of the Gujarat Public Premises (Eviction of Unauthorised Occupants) Act, 1972 (hereinafter referred to as the Act of 1972). It is not in dispute that the said proceedings could not be disposed of. It is astonishing that the said summary proceedings are kept pending for long, long 12 years. The less said the better it is. It is pointed out by the learned Advocate for the petitioner that the licence fee has been accepted by the respondents till the date the petitioner was dispossessed in a high handed manner. The say of the respondents is that the petitioner was not dispossessed in a high handed manner, on the contrary the petitioner society itself vacated the premises. This fact is being seriously disputed. The petitioner alleged to have been dispossessed on 3-6-1995. Mr. Lakhani, learned Advocate for the respondents invited my attention to letter of the petitioner society dtd 11-9-1995 addressed to the Divisional Controller requesting the Corporation to give back the remaining articles which are lying in the shop. Prima facie it does not appears to be a letter surrendering the possession. In fact it is a letter subsequent to the alleged possession. Mr. Lakhani, Learned Advocate for the respondents submits that the Respondents invited tenders from the general public and they were opened on 11-9-1995. After negotiations third party agreed to pay to the respondent Corporation licence fee of Rs.7,501/-.

3. It may of course be said that since petitioner's licence has not been renewed, his possession is unauthorised, but the fact remains that eviction proceedings have been initiated against the petitioner under the provisions of the Act of 1972, and there is no declaration yet that the petitioner in unauthorised possession. It is also not in dispute that the petitioner has been dispossessed from the subject premises and as such now the question is of restoration. The fact cannot be lost sight that the petitioner's licence has not been continued after 1984, but the petitioner has continued in possession and licence fee at the rate of Rs.281/- p.m. has been accepted by the respondent Corporation. Another important factor to be kept in view is that third party has agreed to pay licence fee of Rs.7,501/-, but the possession has not been delivered to him. Taking the comprehensive view of the matter, and balancing the equities between the parties and to meet the ends of justice, following order is passed:

-: O R D E R :-

Pending final conclusion of the proceedings against the petitioner under the Act of 1972, the petitioner is provisionally allowed to carry on its business, in the subject premises on a monthly licence fee of Rs.7,501/- on just and usual terms, provided the petitioner makes first deposit in advance before 30th April, 1996, and continue to deposit month by month. On two consecutive defaults, the petitioner will be liable to eviction. If the petitioner fails to deposit the aforesaid amount before 30th April 1996, it will be open for the Respondent to give possession of the premises to third party. In case the proceedings under the Act of 1972 are decided against the petitioner by the competent officer, the order shall not be carried out for a period of one month.

Rule made absolute to aforesaid extent. No order as to cost.

-0-0-0-0-0-